

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
CONSIGLI & ASSOCIATES, LLC,	:	
Plaintiff,	:	
	:	20 Civ. 7712 (LGS)
-against-	:	
	:	<u>ORDER</u>
MAPLEWOOD SENIOR LIVING, LLC,	:	
Defendants.	:	
-----	X	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on March 7, 2022, Defendant Maplewood Senior Living, LLC (“MSL”) filed Amended Counterclaims against Plaintiff Consigli & Associates, LLC (“Consigli”). The Amended Counterclaims include claims for breach of contract, breach of the implied covenant of good faith and fair dealing and fraud. The fraud counterclaim is based on detailed allegations to the effect that, Consigli represented to MSL that MSL would be charged only for certain insurance-related costs, and in fact the “stipulated rates” Consigli charged MSL pursuant to the express terms of the parties’ contract exceeded those costs. The contract and implied covenant counterclaims assert an array of alleged breaches by Consigli including, in the contract claim, “charging and taking payment for improper and grossly excessive costs,” and in the implied covenant claim, “knowingly, intentionally and wrongfully charging and accepting payments for improper and grossly excessive costs to which Consigli was not entitled.” The Amended Counterclaims do not allege that Consigli charged more than the “stipulated rates” in the contract for insurance, only that Consigli had misrepresented what the “stipulated rates” represented.

WHEREAS, the Opinion and Order dated February 8, 2023, granted Consigli summary judgment on MSL’s fraud claim, holding that Consigli’s representations were “consistent with the arrangement described in the Contract” in which MSL paid the contractually stipulated rates,

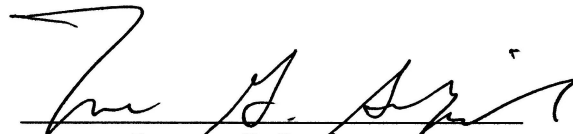
regardless of whether those rates matched the “costs” or “premiums” to which MSL believed the rates should be limited. Consigli did not move for summary judgment on the “excessive costs” claim embedded in either MSL’s breach of contract or breach of implied covenant counterclaim.

WHEREAS, before summary judgment motions were decided, MSL had been seeking discovery related to insurance costs on the project from Consigli’s surety, Federal Insurance Company (“Federal”), for almost a year. On March 8, 2023, MSL moved to compel the remaining discovery it seeks from Federal. On March 14, 2023, Federal opposed MSL’s motion and cross-moved for a protective order. On March 20, 2023, MSL filed a reply. On both March 14 and March 21, 2023, Consigli filed letters opposing MSL’s motion. Consigli was invited by the Court to respond because one key issue raised by the motion is whether, after the dismissal of MSL’s fraud counterclaim, there are any claims remaining for trial in which the cost of insurance on the project is at issue, such that this discovery is relevant and proportional. It is hereby

ORDERED that MSL’s motion to compel is DENIED, Federal’s motion for a protective order is GRANTED, and Federal’s motion for leave to file a sur-reply is DENIED as moot. The discovery MSL seeks is no longer relevant and proportional to the needs of the case in light of the decision granting Consigli summary judgment on MSL’s fraud counterclaim. The contract and implied covenant counterclaims are not supported by any non-conclusory allegations that the insurance costs charged were improper or excessive, except insofar as they allegedly exceeded Consigli’s representations that underlay the fraud claim.

The Clerk of Court is respectfully directed to close the motions at Dkt. Nos. 270, 274, 276, 280 and 286.

Dated: March 23, 2023
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE